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**IN THE
COURT OF APPEALS OF INDIANA**

ROOSEVELT D. BROOKS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A02-0606-CR-453

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0405-FC-175

August 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Roosevelt Brooks appeals his convictions for Resisting Law Enforcement¹ as a class A misdemeanor; Possession of Cocaine with Intent to Deliver² as a class A felony; Possession of Marijuana³ as a class D felony; and Maintaining a Common Nuisance⁴ as class D felony as well as his adjudication as an habitual offender.⁵ The sole issue for our review is whether the trial court erred in admitting evidence at trial.

We affirm.

In May 2004, Madison County Drug Task Force Detective Stephan Blackwell received information that Brooks was dealing both cocaine and marijuana at his residence on Cedar Street in Anderson. On May 24, 2004, Detective Blackwell and Detective Kevin Earley approached Brooks's residence on a walkway where visitors would be expected to go. They planned to perform a "knock and talk."⁶ As the detectives reached the house, Brooks exited the front door. Detective Blackwell held up his badge and told Brooks that he and Earley were police officers that wanted to speak with him. Brooks took off running with

¹ Ind. Code Ann. § 35-44-3-3 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

² Ind. Code Ann. § 35-48-4-1 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

³ I.C. § 35-48-4-11 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

⁴ I.C. § 35-48-4-13 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

⁵ Ind. Code Ann. § 35-50-2-8 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

⁶ A "knock and talk" investigation involves officers knocking on the door of a house, identifying themselves as officers, asking to talk to the occupant about a criminal complaint, and eventually requesting permission to search the house. *Redden v. State*, 850 N.E.2d 451 (Ind. Ct. App. 2006), *trans. denied*.

Detective Blackwell in pursuit. The detective yelled, “stop, police,” several times, but Brooks refused to stop. Brooks continued running until the detective caught up with him.

Detective Earley remained outside the residence. Brooks had left a door open when he fled, and the detective observed through the doorway a substance he believed to be marijuana on a table in the living room. Detective Early also observed a woman in the house whom he recognized as Tia Perry. The detective knew there was an outstanding arrest warrant for Perry and was concerned that she might attempt to dispose of the marijuana. Detective Earley therefore entered the residence’s living room. While there, the detective observed a white rock-like substance on a stereo speaker.

Detective Blackwell returned to the residence with Brooks. Thereafter, the detectives obtained a warrant to search Brooks’s residence. The search revealed 65 grams of crack cocaine, sixty-six individual baggies of marijuana, and drug paraphernalia. Brooks, who was charged with several offenses, filed a motion to suppress the evidence obtained during the search of his residence. The trial court denied the motion after a hearing, and Brooks did not appeal. At trial, the trial court admitted the evidence over Brooks’s objections, and he was convicted as charged. Brooks now appeals only the admission of this evidence at trial.

Brooks argues that the trial court erred in denying his motion to suppress evidence. He did not, however, pursue an interlocutory appeal from the denial of his motion. Rather, he proceeded to trial, during which time he renewed his objection to the evidence. The issue is therefore whether the trial court abused its discretion by admitting the evidence at trial. *See Kendall v. State*, 825 N.E.2d 439 (Ind. Ct. App. 2005), *aff’d in part and vacated in part on other grounds, cert. denied*, 127 S.Ct. 1370 (2007). A trial court has broad discretion in

ruling on the admissibility of evidence and we will reverse such a ruling only for an abuse of that discretion. *Id.* An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the trial court. *Id.*

Here, Brooks argues that Detective Early should not have entered Brooks's home without a warrant, and that the warrantless entry violated Brooks's federal and state constitutional rights. To trigger Fourth Amendment protections, a search must arise out of an intrusion by a government actor upon an area in which a person maintains a reasonable expectation of privacy. *Holder v. State*, 847 N.E.2d 930 (Ind. 2006). Police officers in the course of their official business are, however, permitted to approach one's dwelling and seek permission to question an occupant. *Redden v. State*, 850 N.E.2d 451.

Further, when police officers come onto private property to conduct an investigation or for some other legitimate purpose, and they restrict their movements to places visitors could be expected to go, such as walkways, driveways, or porches, observations made from such vantage points are not protected under the Fourth Amendment. *Traylor v. State*, 817 N.E.2d 611 (Ind. Ct. App. 2004), *trans. denied*. Also, when a law enforcement officer observes something from an area where the officer is lawfully entitled to be, anything that is in "open view" may be observed without having to obtain a search warrant because making such "open view" observations does not constitute a search in the constitutional sense. *Kendall v. State*, 825 N.E.2d 439.

On the other hand, searches of an area in which a person maintains an expectation of privacy that are performed by government officials without warrants are per se unreasonable under the Fourth Amendment to the United States Constitution, subject to a few specifically

and well-delineated exceptions. *Holder v. State*, 847 N.E.2d 930. A search without a warrant requires the State to prove an exception to the warrant requirement applicable at the time of the search. *Id.* An exigency that may properly excuse the warrant requirement is the imminent destruction of evidence. *Id.*

Here, Detectives Blackwell and Earley approached Brooks's house to conduct a "knock and talk." In approaching the front door, the detectives stayed on a common walkway where visitors would be entitled to go. In addition, because Detective Earley was lawfully entitled to be on the property, his observation through the open front door of the marijuana in Brooks's house was not a search in the constitutional sense because the marijuana was in open view. Further, because Detective Earley knew there was an outstanding warrant for Perry and was concerned she would destroy the marijuana, he had the right to enter the residence to arrest her. Detective Earley's entry into Brooks's residence did not violate the Fourth Amendment. Accordingly, the trial court did not err in admitting the evidence at trial.

We now turn to Brooks's state constitutional claim. In deciding whether Officer Earley's warrantless entry into Brooks's house violated article 1, section 11 of the Indiana Constitution, we must determine whether, under the totality of the circumstances, the entry was reasonable. *See Traylor v. State*, 817 N.E.2d 611. Our review of the evidence reveals that the detectives were at Brooks's residence for the legitimate purpose of conducting an investigation. Additionally, when approaching the residence, the detectives stayed in places where visitors would be expected to go. When Brooks left the front door open as he fled, Detective Earley saw through the doorway what he believed to be marijuana in open view in

the living room. He also saw a woman in the house that he knew had an outstanding arrest warrant and was concerned she would destroy the marijuana. Under the totality of these circumstances, Detective Earley's entry into Brooks's house was reasonable and did not violate the Indiana Constitution.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.